BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 1999-268-C - ORDER NO. 1999-714

OCTOBER 11, 1999

IN RE: Petition of Myrtle Beach Telephone, L.L.C. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Horry Telephone Cooperative, Inc.	)))))	ORDER ON ARBITRATION

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina ("Commission") on the petition of Myrtle Beach Telephone, L.L.C. ("MBT") for arbitration to establish an interconnection agreement with Horry Telephone Cooperative, Inc. ("Horry"), pursuant to Section 252(b) of the Telecommunications Act of 1996 (the "Act"). In its petition for arbitration, MBT raises two issues. The first issue concerns the appropriate wholesale discount applicable to Horry's services for resale. The second issue concerns the appropriate prices for Horry's unbundled network elements ("UNEs").

MBT made a bona fide request for interconnection, services, or network elements, pursuant to Section 251(f) of the Act, by letter dated September 11, 1998. Horry thereafter notified the Commission that it did not intend to pursue its right to maintain an automatic rural telephone company exemption under Section 251(f)(1) of the Act. MBT's bona fide request was deemed to be effective on January 11, 1999, the date on which Horry received a copy of Commission Order No. 98-993 revoking Horry's rural exemption. Pursuant to Section 252(b)(1), MBT could bring a petition for arbitration of outstanding issues during the period from the 135th to the 160th day after January 11, 1999. The Commission has 9 months, or until October 11, 1999, to resolve matters raised in the petition. See § 252(b)(4)(C) of the Act.

MBT filed its petition on or about June 17, 1999. Upon the filing of the petition, the Commission established a schedule and procedures for arbitration. See Commission Order No. 1999-499 dated July 13, 1999. The parties in this matter filed testimony setting forth the outstanding issues to be arbitrated by the Commission. The parties and the Consumer Advocate for the State of South Carolina ("Consumer Advocate"), who was a participant in the proceeding, also submitted lists of suggested examination questions.

On June 2, 1999, Horry filed a petition for suspension or modification, pursuant to Section 251(f)(2) of the Act, of certain duties contained in Section 251(c) of the Act, specifically those related to UNEs and to facilities-based interconnection. The petition was assigned Docket No. 1999-249-C. The Commission issued Order No. 1999-561, dated August 10, 1999, in which it held UNE issues in abeyance pending resolution of the 251(f)(2) petition, as specifically permitted by Section 251(f)(2) of the Act. On September 3, 1999, Horry withdrew its 251(f)(2) petition. Horry asserts that, because UNE issues have been held in abeyance while the petition was pending, the Commission has an additional time period during which to resolve UNE issues. MBT claims that, because the 251(f)(2) petition has been withdrawn, the Commission is again bound by the October 11, 1999, deadline by which to resolve UNE issues. We do not need to reach this issue, because the parties have resolved all issues relating to UNEs except for the posting of a bond, which we resolve herein.

An arbitration hearing was held on this matter on September 20, 1999, in the Commission's hearing room. The Honorable William Saunders, Vice Chairman, presided. Florence P. Belser, Esquire, Staff Counsel, assisted the Commission with the examination during the hearing. MBT was represented by Mitchell Willoughby, Esquire and B. Craig Collins, Esquire, and Horry Telephone Cooperative, Inc. was represented by M. John Bowen, Jr., Esquire and Margaret M. Fox, Esquire. The Consumer Advocate was a participant in the proceeding and was represented by Elliott F. Elam, Jr., Esquire.

MBT presented the testimony of William A. Byrd, Vice President of Corporate Development for MBT, and Don J. Wood, Regional Director of Klick, Kent, and Allen, Inc., an economic and financial consulting firm. Horry presented the testimony of M. O'Neal Miller, Jr., Chief Executive – Financial Operations for Horry, and Douglas Meredith, Director of the Economics and Pricing/Policy Division of John Staurulakis, Inc., a telecommunications consulting firm.

At the beginning of the hearing, the parties stated that they were close to an agreement on the UNE issues. Before the close of the hearing, the parties resolved all issues involving UNEs, on an interim basis, except for the issue of whether MBT should be required to post a bond. Horry has requested that MBT file a bond if it orders UNEs at interim prices, to ensure that MBT will be financially able to pay any true-up amounts for which it has agreed to be liable. Hearing Exhibit No. 6 was reserved for the late filing of a written agreement between the parties. Horry and MBT agreed to be bound by the Commission's decision on the issue of the posting of a bond by MBT.

Also at the beginning of the hearing, counsel for Horry made a motion to strike a portion of the Supplemental and Rebuttal Testimony of Don J. Wood. Specifically, Horry requested that the Commission strike page 8, line 4 through page 9, line 9 of Mr. Wood's testimony. Horry asserted that Mr. Wood's Supplemental and Rebuttal Testimony consisted of one section containing appropriate rebuttal testimony that was responsive to Mr. Meredith's direct testimony; one section that improperly raised a new issue concerning "forward looking" wholesale discounts; and one section that raised UNE issues for the first time in testimony in this proceeding. Citing Palmetto Alliance v. South Carolina Public Service Comm'n, 282 S.C. 430, 319 S.E.2d 695 (1984), Horry argued that rebuttal testimony should be limited to testimony that is responsive to issues raised by the other party. Noting that settlement of the UNE issues was imminent, counsel for Horry did not move to strike the portion of Mr. Wood's supplemental and rebuttal testimony dealing with those issues, but reserved the right to do so later in the hearing if it became necessary. Counsel for MBT noted that Mr. Wood stated in his direct testimony that his analysis of Horry's methodology was ongoing. MBT argued that it was appropriate, therefore, for Mr. Wood to raise issues arising out of his continuing analysis in supplemental and rebuttal testimony. The Commission took this motion under advisement.

II. FINDINGS OF FACT

1. Horry Telephone Cooperative, Inc. was organized in South Carolina as a telephone cooperative in 1952. Horry is a non-profit based service corporation owned and operated by its members. Horry has less than 85,000 access lines, and is a rural telephone company as that term is defined in the Act, 47 U.S.C. § 153(37). Horry serves most of Horry County with exceptions being the cities of Myrtle Beach, Conway, North Myrtle Beach and parts of Surfside Beach. Horry also serves a small portion of Georgetown County.

2. Myrtle Beach Telephone, L.L.C. is a South Carolina limited liability company formed to provide local and long distance telecommunications services in South Carolina. MBT obtained a certificate of public convenience and necessity from this Commission by Order No. 98-101, dated February 11, 1998, in Docket No. 97-476-C.

3. Horry has submitted evidence of costs booked to certain USOA accounts, using year-end 1998 numbers. The actual cost data was not disputed by MBT. We find these costs to be accurate, as testified to by Mr. Miller and Mr. Meredith.

III. CONCLUSIONS OF LAW

A. GENERAL

This arbitration is being conducted pursuant to Section 252 of the Act. Pursuant to Section 252(b)(4)(A), we limit our consideration to the issues set forth in the petition and in the response.

The appropriate legal standard to be applied in this case is stated in Section 252(d)(3) of the Act, as follows:

> [A] state commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

In addition, the FCC rules regarding resale services, 47 C.F.R. §§ 51.601 through 51.617 apply. These rules were previously stayed by the Eighth Circuit Court of Appeals. See Iowa Utilities Board v. Bell Atlantic Corporation, 120 F.3d 753, 800 fn. 21 (filed July 17, 1998). On January 25, 1999, the United States Supreme Court reversed the Eighth Circuit Court of Appeals on this issue. See AT&T Corp. v. Iowa Utilities Board, 119 S. Ct. 721, at 733 and 738 (filed January 25, 1999). While pricing issues were remanded to the Eighth Circuit Court of Appeals for review on their merits, no further stay of these rules has been issued at this time. This case marks the first time this Commission has been bound by the FCC rules in determining an appropriate wholesale discount rate.

B. MOTION TO STRIKE

As noted above, Horry made a motion to strike the portion of Mr. Wood's supplemental and rebuttal testimony that advocates projecting the avoidable cost discount into the future. Specifically, Horry moved to strike page 8, line 4 through page 9, line 9 of Mr. Wood's supplemental and rebuttal testimony. Horry asserted that MBT had not raised the issue of forward-looking wholesale discounts in any direct testimony and that it cannot raise the issue for the first time in rebuttal testimony. In response, MBT argued that Mr. Wood's direct testimony noted that he had not had the time to fully review Horry's responses to MBT's Second Set of Interrogatories. MBT does not allege any delay on the part of Horry in responding to these interrogatories within the time frame requested by MBT. A general statement that a witness has not had time to fully prepare his direct testimony does not abrogate the party's duty to raise issues in its direct testimony. Rebuttal testimony, as its name indicates, is intended to be responsive to issues raised in the direct testimony of the opposing party. It should not be used as a vehicle to raise new issues, unless the party can show good cause why the issues were not raised earlier. We do not believe MBT has shown good cause for raising this new issue for the first time in rebuttal testimony, and, therefore, we grant Horry's motion to strike this portion of Mr. Wood's supplemental and rebuttal testimony.[1] See Palmetto Alliance v. South Carolina Public Service Comm'n, 282 S.C. at 438, 319 S.E.2d at 700.

C. WHOLESALE DISCOUNT

The parties have presented various and complex testimony regarding the methodology that should be used in calculating the wholesale discount rate for Horry. To summarize and simplify these arguments, MBT has presented a methodology that is consistent with that presented by Mr. Reid on behalf of BellSouth in the BellSouth/AT&T arbitration. See Wood Direct Testimony, page 7 line 5 through page 8 line 11. As pointed out by Horry, however, even Mr. Reid acknowledged that his methodology did not comply with the FCC rules on wholesale discounts. Horry's

[1] Even if we were to allow this testimony, we would reject Mr. Wood's argument on its merits. There is nothing in the Act or in the FCC rules that even contemplates calculating a wholesale discount on a forward looking basis. To the contrary, the FCC rules for calculating the wholesale discount rate seem to contemplate a "point in time" calculation based on a cost study and the local exchange carrier's existing retail rate. See 47 C.F.R. §§ 51.607 and 51.609.

position is that whatever methodology the Commission uses should compare "apples to apples." In Horry's view, the formula used should be either:

(1) $\dfrac{\text{total avoidable cost}}{\text{total cost}}$ or

(2) $\dfrac{\text{retail (local) avoidable cost}}{\text{retail revenue or cost}}$

Horry advocated the former, but provided evidence on the latter as well, and acknowledged that either would be appropriate for the Commission to adopt. Upon questioning regarding Mr. Reid's methodology for BellSouth, Horry conceded that Mr. Wood's proposed methodology could be considered consistent with FCC rules, but only if the Commission allowed Horry to show that specific costs are not included in the retail prices of resold services, as specifically permitted by FCC Rule 51.609(d). The Commission should also include indirect avoidable costs, as required by section 51.609(c)(2) of the FCC rules.

In addition to differences on the basic methodology, the parties differed on what portions of costs could be excluded from the calculation of the wholesale discount, pursuant to FCC Rule 51.609(d). The FCC rule provides in part:

> Costs included in [USOA] accounts 6611-6613 and 6621-6623 . . . may be included in wholesale rates [i.e., excluded from avoidable costs] only to the extent that the incumbent LEC proves to a state commission that specific costs in these accounts will be incurred and are not avoidable with respect to services sold at wholesale, or that specific costs in these accounts are not included in the retail prices of resold services.

Horry witness Douglas Meredith presented testimony using the total avoidable cost methodology. Horry used the FCC default avoidable percentages for the referenced accounts, except that Horry made a showing that certain portions of direct costs in accounts 6622 (directory listings) and 6623 (customer services) would not be avoided, and that certain portions of indirect costs in accounts 6722 (external relations), 6725 (legal services), 6726 (procurement costs), and 6727 (research and development) would not be avoided.

While Horry did not advocate the use of a retail revenue-based methodology, Mr. Meredith stated that it would be appropriate to use a retail revenue methodology as long as the Commission includes only retail avoidable costs in the numerator of the calculation. Mr. Meredith's exhibit DM-03 presents Horry's 1998 Toll Cost Study, Part 69 Jurisdiction Cost Study. This exhibit shows what portion of each relevant account is attributable to local expense (i.e., what portion is included in the retail prices of resold services).

The parties also disagree on whether or not the Commission should allow cost onsets in calculating the wholesale discount rate. A cost onset is a cost that will be realized in providing wholesale service that is beyond any costs that are related to Horry's retail function. See Meredith Testimony at p. 16, lines 2-3. Horry argues that it is currently a retail-only operation, and that it is appropriate to conclude that Horry will incur some additional costs in providing wholesale services. Specifically, Mr. Meredith testified that there would be recurring cost onsets for billing wholesalers, wholesaler bill inquiry, customer inquiry referrals to the wholesaler, wholesaler payment and collection, audit of cross-class usage, and indirect cost onsets. In addition, Horry will incur non-recurring costs associated with the provision of wholesale services, including the cost of the avoidable cost study, severance pay, and the cost of tariff changes (if applicable). In his calculation of cost onsets, Mr. Meredith added recurring costs to an amortized portion of the non-recurring costs and calculated the cost onsets total at $236,859. The cost onsets total was converted to a percentage (0.56% of total costs; 1.06% of retail revenues), which was subtracted from the overall wholesale discount percentage to arrive at a final discount percentage.

MBT acknowledged that cost onsets may exist, but asserted that this was a "matter for another day." See Wood Direct Testimony at p. 14, lines 2-3. Horry acknowledged that the FCC rules do not provide for cost onsets. However, Horry noted that the FCC was aware that some parties believed cost onsets are appropriate and did not prohibit the use of cost onsets. In support of its position, Horry cited to the FCC's First Report and Order on Local Competition which states in part:

> We adopt a minimum set of criteria for avoided cost studies used to determine wholesale discount rates. . . . At the same time, our criteria are intended to leave the state commissions broad latitude in selecting costing methodologies that comport with their own ratemaking practices for retail services. Thus, for example, our rules for identifying avoided cost by USOA expense account are cast as rebuttable presumptions, and we do not adopt as presumptively correct any avoided cost model.

First Report and Order on Local Competition, para. 909.

Finally, there was some question about whether the Commission should assume, in calculating the wholesale discount rate, that Horry will automatically become a 100% wholesale services provider, as the FCC default inputs presume, or whether it is appropriate to conclude that Horry will continue to provide retail services in addition to wholesale services (i.e., it will be a "hybrid" provider.)

We will address the issues of basic methodology; exclusion of certain costs pursuant to FCC Rule 51.609(d); cost onsets; and hybrid provider below.

(1) Basic Methodology

We adopt a methodology of "Local Retail Avoidable Costs divided by Local Retail Revenues." While this methodology was not primarily advocated by Horry, Mr. Meredith testified that a retail avoidable cost divided by retail revenues methodology would be an appropriate methodology and indicated that this methodology is consistent with FCC rules. This methodology is also very similar to that used in the BellSouth and GTE arbitrations with AT&T. The difference is that this methodology allows for the addition of indirect avoidable costs, as required by FCC Rule 51.609(c)(2), and it allows Horry to show, as permitted by FCC Rule 51.609(d), that certain expenses are not included in the retail rates of resold (i.e., local) services.

(2) Exclusion of costs pursuant to Rule 51.609(d):

FCC Rule 51.609(d) provides:

> Costs included in [USOA] accounts 6611-6613 and 6621-6623 . . . may be included in wholesale rates [i.e., excluded from avoidable costs] only to the extent that the incumbent LEC proves to a state commission that specific costs in these accounts will be incurred and are not avoidable with respect to services sold at wholesale, or that specific costs in these accounts are not included in the retail prices of resold services.

In other words, the rule expressly allows for companies to rebut the FCC's presumptions that given percentages of certain accounts will be avoidable. In addition, companies can remove certain costs from the calculation of avoidable costs if they can show that these costs are not included in retail rates.

(a) Rebuttable presumptions on avoidable costs

MBT has proposed that the Commission should use the same percentages for avoidable accounts that were previously ordered by the Commission for BellSouth. However, as pointed out during questioning of MBT witness Mr. Wood, there are actually some disparities between the percentages adopted by the Commission in Docket No. 96-358-C and those presented by Mr. Wood in his testimony and exhibits. MBT has further asserted that it is up to Horry to prove that certain costs will not be incurred and that Horry has not met this burden.

Horry adopted the FCC's avoidable cost percentages for all accounts with some exceptions, as fully explained in Mr. Meredith's testimony. With respect to direct avoidable costs, Horry assumed that the costs in account 6622 (related to directory listings) would not be avoidable. Mr. Meredith testified that Horry is required to provide white page listings with its retail and wholesale service offerings. As pointed out by Mr. Miller, the Commission currently requires Horry to list in its white pages all numbers that can be reached through local (including EAS) calling, regardless of whether the called party is a customer of Horry. Horry also showed that certain costs in account 6623 would not be avoided. Mr. Meredith conducted a study of the expenses in this account. He used the results of Horry's time force study, conducted for interstate cost allocation purposes, to determine the costs for each function listed in the account. He then analyzed each function, making a determination of whether it would be avoided or not avoided in a wholesale environment. Functions which Mr. Meredith determined not avoidable in account 6623 were: PIC change charges, IXC switched order processing, IXC special order processing, IXC B&C order processing, IXC payment and collection, IXC switched bill inquiry, IXC special bill inquiry, coin collecting and counting, message processing, and CABs billing expense. Local order processing was conservatively estimated as 75% avoidable, based on the results of Mr. Meredith's review of service order work functions involving various types of typical service orders.

The Commission finds that Horry has provided sufficient proof that the costs associated with directory listings are not avoidable and should be included in the wholesale discount. The Commission agrees with Horry that these costs would be incurred whether the customer is a customer of Horry or another carrier since Horry is required to provide listings for all numbers which can be reached through local, including EAS, calling. Further, the Commission agrees with Horry's assertion that the costs associated with account 6623 such as PIC change charges, IXC switched order processing, IXC special order processing, IXC B&C order processing, IXC payment and collection, IXC switched bill inquiry, IXC special bill inquiry, coin collecting and counting, message processing, and CABs billing expense would not be avoided. MBT did not contest Horry's treatment of these costs in account 6623. Thus with regard to direct avoidable costs, the Commission finds that the costs in these accounts discussed above will not be avoided in a wholesale environment. However, the Commission will not utilize the avoidable percentages proposed by either party. Since the Commission has adopted a wholesale discount methodology of "Local Retail Avoidable Costs divided by Local Retail Revenues," the Commission will apply the separations study (Exhibit DM-03) to the total cost per account to calculate the direct avoided costs. The separations study shows which portions of costs in those accounts are imputed to local service. By applying the separations study to the total cost per account, the Commission does not need to assign an avoidable percentage as proposed by either party.

In addition to certain direct costs contained in these two accounts, Horry has provided proof that certain indirect costs will not be avoided. Horry used the FCC's indirect avoidable percentages with the following exceptions. Horry explained that costs associated with maintaining external relations (account 6722) would not be reduced if Horry were to provide wholesale services for resale. In fact, as the number of carriers increases, the costs of maintaining these relationships will likely increase. Likewise, the cost of legal services (account 6725), at least in the short term, is increasing, in large part due to the necessity of negotiating interconnection agreements and possibly (as is the case here) arbitrating terms for those agreements. Procurement costs (account 6726) are not avoided, because Horry will still be required to analyze and select suppliers for its network, place orders, develop standards and assure employee training for network equipment. Similarly, research and development costs (account 6727) are not avoidable because Horry will still be a viable business entity and will design wholesale products that will attract and increase demand for its services.

With regard to avoidable indirect costs, the Commission finds that Horry has provided sufficient proof that the costs associated with these accounts will not be avoided and finds that these costs should be included in the calculation of the appropriate wholesale discount rate. Horry has used the FCC's default avoidable cost percentages for all other indirect cost accounts. However, the Commission will utilize an indirect avoidable cost percentage of 8.1%. This percentage is obtained by dividing local retail direct avoided cost ($1,497,664) by total local retail expense ($18,522,238). The Commission concludes this percentage is the appropriate indirect avoidable cost percentage attributable to local service, rather than FCC default percentages.

(b) Showing that certain costs are not included in retail rates

Horry's Exhibit DM-03 contains a separations analysis, as submitted to the FCC, showing which portions of the costs in those accounts are attributable to local service. The remaining costs (i.e., those associated with interLATA jurisdictions) can be removed from the calculation of avoidable costs because they are not included in retail (local) rates. We conclude that Horry has proved, as reflected in Exhibit DM-03, that these costs are not included in its retail rates for services to be resold and, therefore, would appropriately be excluded from the calculation of Horry's avoidable costs under a "retail revenue" methodology.

(3) Cost onsets

We do not agree with Horry's assertion that cost onsets are appropriate for inclusion in the avoidable cost methodology. While the company may incur additional costs in providing wholesale services that are not related to the retail function, the reduction of the wholesale discount through cost onsets is not provided in the applicable standard set out in the Act. Section 252(d)(3) of the Act requires that wholesale rates be determined on the basis of retail rates, "excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." This section makes no provision for cost onsets in determining wholesale rates.

Horry asserts that the FCC has not prohibited the application of cost onsets in calculating a wholesale discount. Further, Horry asserts that the FCC has refrained from adopting a particular avoided cost model and has given state commissions broad latitude in selecting appropriate methodologies. See FCC's First Report and Order on Local Competition, para. 909. MBT argues there is no precedent for allowing cost onsets to be considered in determining an appropriate wholesale discount rate. Horry's witness Meredith noted that some parties had suggested to the FCC to allow cost onsets in its wholesale pricing rules and further noted that the FCC did not prohibit the establishment of cost onsets. (Meredith Direct, p. 16, lines 17-18) However, the FCC did not specifically adopt the use of cost onsets as evidenced by the FCC rules that provide "[t]he wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the incumbent LEC's existing retail rate for the telecommunications service, less avoided retail costs …." 47 CFR§51.607(a) (1996).

This is the first time this Commission has been asked to decide whether it is appropriate to allow the use of cost onsets in the calculation of the wholesale discount. The Commission will not adopt the use of cost onsets in this proceeding. As costs onsets are not specifically provided for by either the Act or the FCC pricing rules, even though the FCC had ample opportunity to include cost onsets in the pricing rules, this Commission will not use cost onsets in determining the appropriate wholesale discount for Horry.

(4) Assumption That Horry Will Continue to Provide Retail Services

Horry testified it would continue to provide a retail function even after it starts providing wholesale services for resale. MBT did not disagree with this assertion. Consistent with the findings in our prior orders, we find it is reasonable to assume that Horry will continue to provide retail services after it begins providing wholesale services for resale.

(5) Consistency with prior determinations

MBT argued that the wholesale discount rate should be consistent with that ordered for GTE, but offered no real basis for this expectation. In fact, in response to a question regarding the basis for this statement in Mr. Byrd's testimony, Mr. Byrd did not answer but deferred to Mr. Wood. As Mr. Miller stated on behalf of Horry, it would be reasonable to expect, based on Horry's lower residential and business rates, that Horry has contained its costs and thus has less costs to avoid. We agree that the methodology used should be as consistent as possible for different companies. However, we believe that, regardless of the methodology used (as long as that methodology is appropriate and in compliance with applicable law), it is reasonable that Horry's inputs and, therefore, its wholesale discount rate will differ from those calculated for much larger companies, and specifically for GTE's. As stated by Mr. Meredith, this is the first time the Commission has arbitrated a wholesale discount rate for a small independent telephone company. Furthermore, this is the first proceeding in which the Commission has been bound to follow the FCC's rules regarding resale and calculation of wholesale discount rates.

(6) Calculation of the Discount Rate

Applying the methodology adopted herein, the Commission calculates a wholesale discount rate of 9.1%. This wholesale discount rate is obtained using a methodology of "Local Retail Avoidable Costs divided by Local Retail Revenues." To ascertain the local costs and local revenues, the Commission must use Horry's separations methodology (as shown on page 1 of Exhibit DM-03). Applying the separations methodology to the total cost per account (shown on page 2 of Exhibit DM-02 in the column delineated as "Per Study 12/31/98), the Commission calculates direct avoided costs for Horry of $1,497,664. The Commission determined an avoidable cost percentage of 8.1% (local retail direct avoided cost divided by total local retail expense[2] of $18,522,238) to calculate indirect avoidable cost. Applying this percentage to all indirect accounts except for the four rebutted accounts (External Affairs – Account 6722, Legal – Account 6725, Procurement Costs – Account 6726, and Research & Development – Account 6727) yields indirect avoided costs of $542,135 for total local avoided cost of $2,039,799. When we divide total local avoidable costs by total local revenues of $22,329,424, the wholesale discount percentage is 9.1%.

D. UNE ISSUES

Prior to the close of the arbitration hearing, Horry and MBT reached an interim agreement that resolved all UNE issues, except for the bond issue. Hearing Exhibit No. 6 was reserved for later filing of a written agreement describing the parties resolution of the issues. Horry agreed that it would provide UNEs at the prices currently provided by GTE to MBT on an interim basis only. The particular UNEs and prices are shown on Attachment A to the agreement. (See, Hearing Exhibit No. 6) Horry notes that it is providing these UNEs and these prices on an interim basis only. In the meantime, Horry is developing final prices for UNEs, which it will provide to MBT not later than December 31, 1999. MBT will have a 90-day period in which to review these prices and file for arbitration, if necessary. If arbitration is requested, the Commission will resolve UNE pricing issues within 3 months after MBT files for arbitration.

(1) Posting of Bond.

Horry argues that the interim prices it has agreed to are just that – interim prices, which are subject to eventual true-up in the event MBT actually purchases UNEs under these prices. Horry believes that its actual costs are likely higher than these interim prices and that true-up will be necessary. Horry is concerned that MBT is a start-up company and that its assets and financial solvency are largely unknown. Horry has requested that the Commission require MBT to post a bond in the amount of $100,000 to protect Horry's customers in the event that MBT defaults on its obligation to pay true-up amounts to Horry.

MBT argues that there is no precedent for requiring such a bond from a competitive local exchange carrier and that a bond requirement would constitute a barrier to entry. Horry witness Miller responded that this Commission requires bonds in numerous instances when protection is required and that Horry itself has been required to post bonds in some cases. Mr. Miller also testified that the cost for Horry to obtain such

[2] Operating expense was calculated by taking total expenses of $32,495,155 (as shown on Exhibit DM-02, page 3) and multiplying by the percentage of allocation factor obtained by total local expenses as compared

a bond would be approximately $1,000 and that this cost does not constitute a barrier to entry.

Based on the record before it, the Commission will not require MBT to post a bond. MBT received its certification to operate from this Commission in February 1998, and the Commission is aware that MBT has been operating since that time in the Grand Strand area of the State. Other than the suggestion by Horry that MBT is a start-up company whose assets and financial solvency are largely unknown, there has been no showing of such allegations. The Commission concludes that there has been no adequate showing of the necessity of the bond, and therefore, the Commission will not require the posting of the bond.

IV. CONCLUSION

The Commission adopts a wholesale discount rate of 9.1% for Horry as set forth above. In addition, MBT shall not be required to post a surety bond as a condition for obtaining UNEs at interim rates. This decision disposes of all unresolved issues between the parties at this time.

to total expenses (as shown on page 1, Exhibit DM-03).

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Philip T. Bradley
Chairman

ATTEST:

Gary E. Walsh
Executive Director

(SEAL)